

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 871 (Delegate Hill)
Health and Government Operations

Declaration of Rights - Religious Freedom, Religious Tests, and Oaths and Affirmations

This proposed constitutional amendment removes numerous references in the Maryland Declaration of Rights that putatively require a belief in God. Additionally, the proposed amendment eliminates provisions in Article 36 of the Maryland Declaration of Rights stating that nothing must prohibit or require the making of certain religious expressions in specified public contexts. The proposed constitutional amendment also (1) repeals Article 39 of the Maryland Declaration of Rights and (2) makes gender neutral conforming changes.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Article 36 of the Maryland Declaration of Rights

Article 36 of the Maryland Declaration of Rights sets forth that all persons are equally entitled to protection in their religious liberty. Protections currently specified in Article 36, and maintained under the proposed constitutional amendment, include that (1) no person

ought to be molested by any law on account of religious persuasion, profession, or practice, unless, under the color of religion, the person disturbs the good order, peace, or safety of the State, or injures the rights of others; (2) no person may be compelled to frequent, maintain, or generally contribute to maintain any place of worship or ministry; and (3) no person who is otherwise competent may be deemed incompetent as a witness or juror on the basis of religious belief.

The proposed constitutional amendment removes from Article 36 a prefatory clause that grounds the article's religious liberty protections (described above) on the basis that it is the duty of every man to worship God in an individually acceptable manner. Additionally, although the proposed amendment does not eliminate the general prohibition against violating the public welfare (or the rights of others) under the color of religion, the amendment eliminates a specification that a person may not "infringe the laws of morality" under the color of religion. The proposed amendment further removes a proviso that a person may not be precluded from serving as a witness or a juror due to religious belief provided the person believes in the existence of God, as specified.

The proposed amendment removes provisions in Article 36 stating that nothing must prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place.

Article 37 of the Maryland Declaration of Rights

Article 37 of the Maryland Declaration of Rights sets forth that (1) no religious test may be required as a qualification for any office of profit or trust in the State, other than a declaration of belief in the existence of God, and (2) the Legislature must not prescribe any other oath of office than the oath prescribed by the Maryland Constitution. The proposed amendment removes the qualifier conditioned upon a declaration of belief in the existence of God.

Article 39 of the Maryland Declaration of Rights

Article 39 of the Maryland Declaration of Rights currently states that the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being. The proposed amendment repeals Article 39 in its entirety.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 181 of 2022.

Designated Cross File: SB 932 (Senator Muse) - Rules.

Information Source(s): Maryland Commission on Civil Rights; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2023
km/jkb

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